

SERVICE AGREEMENT



This Service Agreement (this "Agreement") is entered into, effective as of August __, 2015 (the "Effective Date"), by and between FlexWage Solutions LLC, a Delaware limited liability company, having a principal place of business at 1084 US Route 22 West, Mountainside, New Jersey 07092 ("FlexWage"), and City of Reedley having a principal place of business at 845 G. St. Reedley, CA, 93654 ("Employer"). Capitalized terms shall have the meanings set forth in Exhibit A attached hereto.

WHEREAS, FlexWage offers the Hosted Services, including the Payroll Card Service and the WageBank Service through CenterState Bank of Florida NA ("Bank"); and

WHEREAS, Employer desires to contract with FlexWage as its exclusive provider of the payroll services comprising the Hosted Services and FlexWage desires to provide Employer with the Hosted Services.

NOW, THEREFORE, in consideration of the mutual obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. FLEXWAGE OBLIGATIONS.

1.1. Provision of Hosted Services. FlexWage shall provide the Hosted Services to Employer and its employees during the Term in accordance with the terms and conditions set forth herein. FlexWage shall provide Employer the most current versions of the Hosted Services that are available to FlexWage customers generally.

1.2. Payroll Card Service and WageBank Service. Subject to the terms and conditions set forth herein, FlexWage shall:

1.2.1. Facilitate the issuance of Payroll Cards by Bank to employees of Employer that elect to utilize the Hosted Services;

1.2.2. Provide an internet-based user interface that allows Employer to (a) input and transfer employee time, attendance, human resource, payroll and other data to FlexWage for use in the Hosted Services; and (b) specify certain restrictions on the ability of Cardholders to direct Payroll Payments and WageBank Transfers to be credited to Cardholder Accounts;

1.2.3. Provide internet-based and telephone-based user interfaces that allow each Cardholder to (a) set-up and maintain a Cardholder-specific account and profile; (b) specify that Payroll Payments or WageBank Transfers be credited to such Cardholder's Cardholder Account; and (c) review information regarding such Cardholder's Payroll Card and Cardholder Account, including current and historical balances and transaction history;

1.2.4. Facilitate the credit of Payroll Payments from the Company to applicable Cardholder Accounts; and

1.2.5. Facilitate the debit of the Employer Account for the amounts of any WageBank Transfers and transfer of such amounts to applicable Cardholder Accounts.

1.3. Software and Technical Materials. FlexWage shall, in its sole discretion, make available to Employer appropriate software and technical materials in such form as FlexWage deems necessary and/or appropriate to allow Employer to implement and incorporate the Hosted Services into its human resources, time keeping and payroll systems. Employer shall not modify the contents of any software or technical materials it receives for use in connection with the Hosted Services without FlexWage's prior written consent, which may be granted or withheld in FlexWage's sole discretion. In the event that FlexWage determines that the use of any software or technical materials

that have been modified with its consent pursuant to the preceding sentence has become detrimental to the provision of the Hosted Services, upon the request of FlexWage, Employer shall promptly cease using any such modified technical materials.

1.4. Customer Service. FlexWage shall provide customer service to Employer related to the Hosted Services via internet-based interface and interactive voice response (IVR) 24 hours per day, 365 days per year, and via live telephone operators from 9:00 a.m to 6:00 p.m Eastern Standard Time on Business Days. Subject to the Payroll Card Terms and Conditions, FlexWage shall provide customer service to Cardholders related to the Hosted Services via internet-based interface, interactive voice response (IVR) and live telephone operators 24 hours per day, 365 days per year.

1.5. Training and Marketing Support.

1.5.1. FlexWage shall provide general training and marketing materials and support to Employer in connection with the Hosted Services are reasonably requested by Employer.

2. EMPLOYER OBLIGATIONS

2.1. Exclusive Provider. The parties intend that FlexWage be Employer's exclusive provider of the services comprising the Hosted Services. Employer shall not engage any other person or entity to provide services comprising or similar to the Hosted Services during the Term.

2.2. Employee Verification. Employer is delivering herewith an Employer Registration Form, in the form attached hereto as Exhibit B, verifying that all employees that will utilize the Hosted Services have been or will be properly identified utilizing United States Department of Homeland Security Employment Eligibility Verification, OMB No. 1615-0047 and have or will have a corresponding I-9 Employment Eligibility Verification Form on file with Employer. Employer acknowledges and agrees that it is aware of and will abide by all state and federal payroll laws and requirements. Employer further acknowledges and agrees that it will obtain a signed employee direct deposit authorization specifying the Cardholder Account as an authorized deposit account in a form suitable to FlexWage (an "Employee Authorization Form") for each employee prior to a Payroll Card being issued to such employee. Employer shall maintain all such Employee Authorization Forms at Employer's principal place of business during the Term. All Employee Authorization Forms are subject to audit by FlexWage upon three Business Days prior written notice.

2.3. Demand Deposit Accounts. Employer shall establish and maintain one or more demand deposit account(s) at Employer's Bank for the funding of WageBank Transfers and payment of Invoices (collectively, the "Employer Account") and shall ensure the Employer Account contains sufficient funds to fulfill all requested WageBank Transfers and satisfy all amounts due under Invoices. In the event that the Employer Account does not contain sufficient funds to fulfill a requested WageBank Transfer or satisfy the amount due under any Invoice, Employer shall fund an Escrow Account totaling three day's of expected WageBank transfer activity and housed at the Bank, and accessed by FlexWage only in the case of such shortfall. FlexWage shall have the right to suspend its obligations to provide the Hosted Services under this Agreement at any time the Employer Account does not contain sufficient funds to fulfill a requested WageBank Transfer or satisfy the amount due under any Invoice.

2.4. Direct Debit Authorization. Employer is delivering herewith a Debit and Credit Settlement Authorization, in the form attached hereto as Exhibit C, authorizing FlexWage to withdraw funds sufficient to settle all WageBank Transfer transactions and amounts due under all Invoices via direct debit from the Employer Account.

2.5. Use of Hosted Services. Employer and its employees shall utilize the Hosted Services in compliance with all applicable laws and the Payroll Card Terms and Conditions and shall not (i) send to FlexWage, or store on any equipment utilized in connection with the Hosted Services, any unlawful material or Malicious Code; (ii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Hosted Services or the software or data used in connection therewith; or (iii) permit access to the Hosted Services to anyone other than Employer and its employees that are Cardholders or that are seeking Hosted Services.

2.6. Data. Employer shall provide to FlexWage employee time, attendance, human resource and payroll data, as applicable, on a daily basis through either electronic data transfer or manual entry into a system specified by FlexWage from time to time.

2.7. Taxes. Employer shall be responsible for the calculation, collection and disbursement of all Taxes related to the employment of its employees, including any Cardholders, and FlexWage shall have no obligations whatsoever with respect to such Taxes.

2.8. Program Manager. Employer shall designate a program manager (the "Program Manager") who shall manage Employer's activities related to the Hosted Services. The Program Manager shall have the knowledge and skills necessary to (i) inform employees about the features and capabilities of the Hosted Services and (ii) support all activities related to the Hosted Services, including, but not limited to, employee enrollment, WageBank Transfer settlement and daily reporting activities.

3. PRICING, INVOICING, PAYMENTS AND AUDITS

3.1. Pricing. Pricing for the Hosted Services is based on the number of Cardholders and the specific Hosted Services utilized by Cardholders. Pricing for the Initial Term shall be as set forth in Exhibit D. Pricing for any Renewal Term shall be negotiated by the parties at the time of renewal; provided, however, that the prices for any Renewal Term shall be as set forth on Exhibit D until such time as the parties otherwise agree in writing.

3.2. Invoicing and Payments. FlexWage shall prepare and deliver to Employer invoices for services provided each month within five Business Days of the end of each month (each, an "Invoice"). Payment of each Invoice shall be made by employer to an account designated by FlexWage by the 15th day of each month or the first Business Day thereafter if the 15th is not a Business Day.

3.3. Audits. Each party shall have the right to audit the other party's records relating to payments hereunder upon not less than ten Business Days prior written notice and under reasonable conditions. Neither party may conduct such an audit more often than once per year, unless one party reasonably and in good faith believes payments have been incorrectly determined and the parties have been unable to resolve the dispute in a mutually satisfactory manner despite having attempted to do so in good faith for a period of not less than ten Business Days.

4. LICENSES

4.1. Restricted License. Subject to the terms and conditions of this Agreement, FlexWage hereby grants Employer a non-exclusive, non-transferable, non-sublicensable license to access and use the Hosted Services. All rights related to the Hosted Services not expressly granted to Employer pursuant to this Agreement are hereby reserved by FlexWage.

4.2. Trademark Cross-License. Each party hereby grants to the other a non-exclusive, non-transferable, non-sublicensable, royalty-free license to use, in Employer's case, "FlexWage" and associated logos and, in FlexWage's case, Employer's name and associated logos (collectively, "Marks") solely in connection with promoting the parties' relationship hereunder. Any use of Marks shall be in accordance with the granting party's reasonable trademark usage policies, with proper markings and legends and subject to the granting party's prior written approval. The granting party may withdraw any approval of any use of its Marks at any time in its sole discretion; provided that no such withdrawal shall require the recall of any previously published or distributed materials. During the period of use, the licensed party shall reasonably cooperate with the granting party in facilitating the granting party's monitoring and control of the nature and quality of products and services bearing the granting party's Marks, and shall supply the granting party with specimens of the licensed party's use of the granting party's Marks upon request. If the granting party notifies the licensed party that the licensed party's use of the granting party's Marks is not in compliance with the granting party's trademark policies or is otherwise deficient, then the licensed party shall promptly comply with such policies or otherwise as directed by the granting party. Neither party shall make any

express or implied statement or suggestion, or use the other party's Marks in any manner, that dilutes, tarnishes, degrades, disparages or otherwise reflects adversely on the other party or its business, products or services. Each party acknowledges and agrees that the other party's Marks are and shall remain the property of the other party. Neither party shall gain any right, title or interest with respect to the other party's Marks by use thereof, and all rights or goodwill associated with the other party's Marks shall inure to the benefit of the other party.

5. TERM AND TERMINATION

5.1. Term. This Agreement shall become effective as of the Effective Date and remain in full force and effect for three years therefrom (the "Initial Term"). A new contract will be executed for each renewal term. Either party may provide at least 30 days prior written notice of non-renewal. The Initial Term, together with any Renewal Terms, shall be collectively referred to as the "Term."

5.2. Termination of Agreement. Either party may terminate this Agreement (i) upon 30 days written notice of a material breach by the other party if such breach remains uncured at the expiration of such period; or (ii) immediately upon written notice to the other party if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding.

5.3. Effect of Expiration or Termination. Upon the expiration or termination of this Agreement, the terms of this Agreement shall continue in full force and effect to the extent necessary for each party to fulfill any outstanding obligations hereunder. Notwithstanding the expiration or termination of this Agreement, Sections 6 through 10 shall survive indefinitely or for such shorter period of time as may be specified therein.

6. CONFIDENTIALITY

Neither party shall use or disclose any Confidential Information of the other party for any purpose outside the scope of this Agreement, except with the other party's prior written consent. Each party shall protect the other party's Confidential Information in a manner similar to its own Confidential Information of like nature (but in no event using less than reasonable care). In the event of an actual or threatened breach of a party's confidentiality obligations, the non-breaching party shall have the right, in addition to any other remedies available to it, to seek injunctive relief, it being specifically acknowledged by the breaching party that other remedies may be inadequate.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1. Mutual. Each party represents, warrants, covenants and agrees that (i) it has the legal power to enter into and perform its obligations under this Agreement; (ii) this Agreement is a valid and binding obligation of such party, enforceable against it, in accordance with the terms hereof; (iii) it has obtained and will maintain any and all consents, approvals, licenses or other authorizations necessary for the performance of its obligations hereunder; and (iv) it will comply with all applicable laws and regulations in performing its obligations hereunder, including all laws and regulations relating to the handling of personal data. Neither party shall make any representations or warranties to any third party on the other's behalf without the other's prior written consent.

7.2. Hosted Services. FlexWage represents, warrants, covenants and agrees that (i) it will provide the Hosted Services in a manner reasonably consistent with applicable general industry standards; (ii) the Hosted Services will perform materially in accordance with the relevant portions of the Documentation; (iii) it owns or otherwise has sufficient rights to provide the Hosted Services and to grant the rights and licenses granted herein; and (iv) the Hosted Services do not infringe upon any intellectual property rights of any third party.

7.3. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, BOTH PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. INDEMNIFICATION AND LIMITATION OF LIABILITY.

8.1. Mutual Indemnification. Subject to the provisions of Section 8.2, Each party shall indemnify and hold the other and its agents, officers, managers, directors, shareholders, members, employees and Affiliates harmless from and against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits or proceedings (collectively, "Claims") made or brought by a third party against the indemnified party resulting from the indemnifying party's gross negligence or willful misconduct related to this Agreement or from the indemnifying party's breach of any of its representations, warranties or obligations under this Agreement; provided, that the indemnified party shall: (i) promptly give written notice of the Claim to the indemnifying party (provided no failure to do so shall relieve the indemnifying party of its indemnification obligations unless the indemnifying party is materially prejudiced thereby); (ii) give the indemnifying party sole control of the defense and settlement of the Claim (provided the indemnifying party may not settle or defend any Claim unless it unconditionally releases the indemnified party of all liability); and (iii) provide to the indemnifying party, at the indemnifying party's cost, all reasonable assistance requested by the indemnifying party.

8.2. Limitation of Liability. Notwithstanding the provisions of Section 8.1, in no event shall either party be liable to the other party for any special, indirect, incidental, consequential, exemplary or punitive damages, even if such party shall have been advised of the possibility of such potential loss or damage. In no event shall FlexWage's liability on account of a breach of its obligations under this Agreement exceed the aggregate amount paid by Employer to FlexWage for the Hosted Services under this Agreement during the 12 months immediately preceding such breach.

9. NON-SOLICITATION

9.1. Non-Solicitation of Employees. Neither party shall, during the Term, either directly or indirectly, solicit or otherwise encourage or entice any employee of the other party to leave their current employment; provided, however, that the publication of a solicitation for employment in a newspaper or magazine of general circulation or comparable online recruiting sites shall not alone be deemed a violation of this Section 9.1.

9.2. Survival. The restrictions set forth in Section 9.1 shall be effective during the Term and shall continue and survive for a period of one year following the expiration or termination of this Agreement.

10. GENERAL

10.1. Relationship Managers. Each party shall designate a relationship manager ("Relationship Manager") who shall oversee that party's activities in connection with this Agreement. Each party's Relationship Manager shall serve as its principal point of contact for the other party for the resolution of any issues that may arise. Each party may change its Relationship Manager by notifying the other party in writing. The parties' initial Relationship Managers are as follows:

FlexWage: Dennis Sullivan
FlexWage Solutions LLC
1084 US Route 22 West
Mountainside, NJ 07092
Phone: 908-232-5700
dsullivan@flexwage.com

Employer: Paul A. Melikian
City of Reedley
845 G. St
Reedley, CA 93654
Phone: 559-637-4200 Ext. 300
Email: Paul.Melikian@reedley.ca.gov

10.2. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

10.3. Notices. All notices under this Agreement shall be in writing and may be given by personal delivery, overnight delivery by a nationally recognized overnight carrier, courier, U.S. mail or email addressed to the other party's Relationship Manager as provided in Section 10.1. Any such notice shall be effective upon receipt.

10.4. Dispute Resolution. In the event of any dispute hereunder, the parties shall promptly and in good faith attempt to resolve such dispute for a period of 60 days prior to initiating any formal action, provided that a party may seek temporary injunctive relief if, in good faith, it deems such relief necessary.

10.5. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

10.6. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as most nearly to retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

10.7. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.8. Governing Law. This Agreement shall be governed by Delaware law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Hosted Services shall be subject to the exclusive jurisdiction of the state and federal courts located in Delaware and each party hereby irrevocably consents to the jurisdiction of such courts.

10.9. Entire Agreement. This Agreement, including all attachments and exhibits hereto, constitutes the entire agreement between the parties as to its subject matter and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing signed by both parties. Except as otherwise expressly stated, the terms of the body of this Agreement shall prevail in the event of any inconsistency with the terms of any attachment or exhibit hereto.

10.10. Counterparts. This Agreement may be executed in one or more original or electronic counterparts, which taken together shall form one legal instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date:

FLEXWAGE SOLUTIONS LLC

CITY OF REEDLEY, CALIFORNIA.

Signature 

Name Frank Dombroski

Title President/CEO

Date 8/27/15

Signature 

Name Nicole Zieba

Title City Manager

Date 8/17/15

Index of Exhibits

Exhibit A -- Definitions

Exhibit B -- Employer Registration Form

Exhibit C -- Debit and Credit Settlement Authorization

Exhibit D -- Products and Pricing



REEDLEY CITY COUNCIL

- ☐ Consent
- ☒ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 14

DATE: August 11, 2015

TITLE: APPROVE & AUTHORIZE CITY MANAGER TO SIGN AGREEMENT WITH FLEXWAGE FOR PAYROLL CARD SERVICES RELATED TO EMPLOYEES WHO ARE NOT SET UP ON DIRECT DEPOSIT

BY: Tiffany Couto, Accountant *TC*

SUBMITTED: Paul A. Melikian, Director of Finance & Administrative Services *PM*

APPROVED: Nicole R. Zieba, City Manager *NZ*

RECOMMENDATION

That the City Council approve the attached service agreement with FlexWage, that will provide the City with Visa branded payroll cards for employees who are not set up on direct deposit.

EXECUTIVE SUMMARY

The City has required all new employees to be enrolled into direct deposit, however there are some instances when a new employee may not have a bank account. Implementation of the pay card solution will allow new employees to receive their funds in a more efficient and safer method. This will affect approximately 20 employees, but it will provide for receipt of funds in the same manner as direct deposit, as well as the elimination of potential problems associated with live checks.

The pay card solution will resolve courier delays, checks being lost in either the mail or by the employee and unforeseen circumstances where an employee is unable to come into the office to receive their pay check. Each employee who is set up for the pay card will receive an FDIC insured portable Visa card that is personalized. Staff anticipates that the majority of the pay card users will be part-time and seasonal employees.

BACKGROUND

The FlexWage PayCard is a prepaid card that simplifies paying employees without bank accounts. It can be used anywhere Visa Debit cards are accepted for purchases (in-store and online), to pay bills, or to get cash. FlexWage offers multiple benefits for both the employee and the employer. The following is a summary of benefits provided by FlexWage:

Employee Benefits Include:

- Minimal fees; fees do not exceed \$3.50 for employees
- Access to 55,000 Nationwide Allpoint ATMs; six (6) are in Reedley and many more are available in the surrounding areas.
- Immediate access to pay on payday – no more waiting for paychecks to clear the bank
- Elimination of expensive check-cashing fees
- Can be used anywhere Visa debit cards are accepted
- Can be replaced if card is lost or stolen

- Can be replaced if card is lost or stolen
- Money on lost or stolen card is covered by Visa's Zero Liability Fraud Protection
- Web and mobile account access
- Toll-Free customer support available 24/7

Employer Benefits Include:

- Simplifies part-time and seasonal pay
- Reduces payroll costs
- Streamlines payroll processes
- Eliminates lost checks
- Provides employees with a faster, safer way to receive their pay
- The program is complimentary to direct deposit by utilizing the same process and helping achieve 100% electronic pay

FISCAL IMPACT:

The City will be charged \$2.00 per month per cardholder. Based on an average enrollment of 20 employees (fluctuating due to seasonal employees), the cost will be \$40 per month and \$480 annually. The cost is expected to be almost entirely offset from the savings of eliminating the courier service for the delivery of physical payroll checks each pay period, so no additional appropriations are required to implement this payroll service.

ATTACHMENTS

1. FlexWage service agreement
2. Cardholder Fee Schedule
3. Payroll Debit Cards Information Sheet